FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 737 OF 2007

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. Ravi Kadam with S. V. Kotwal i/b Apex Law for the petitioner
Mr. R.F. Lambey for R-1 & 2

CORAM: SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.
DATED:-24/4/2007

P.C.:-

. The petitioner is residing in U.K. He has filed this petition through his power of attorney holder. The grievance of the petitioner is that he has applied for certified copy of the order dated 4/4/07 passed in Criminal Miscellaneous Application No. 625 of 2006 as well as Criminal Miscellaneous Application No. 52 of 2007 in Special Case No. 68 of 2000. His application is rejected by the trial court by observing as under:

" A/2 is absconding and NBW & Proclamation is pending against him, hence present application cannot be

entertained."

2. Mr. Kadam, the learned Senior Counsel appearing for the petitioner urged that this order is passed ignoring Section 363 sub-clause (5) of the Code of Criminal Procedure, 1973 ("Code" for short). In this connection Mr. Kadam has drawn our attention to the judgment of the Patna High Court in **Shree Lal Saraf v. State of Bihar, 1979 Cri.L.J. 895** and the judgment of Kerala High Court in **Krishnan Sreevalsan v. State, 1992, Cri.L.J. 584**.

3. In **Shree Lal's case (supra)**, the Patna High Court was concerned with a complaint lodged against the petitioner for violating the provisions of Employees' Provident Funds and Miscellaneous Provisions Act. The cognizance of the complaint was taken. The petitioner applied to the learned magistrate for the certified copies of the complaint as well as the order passed thereon . By the impugned order, the learned magistrate refused to supply the

certified copies on the ground that the petitioner had not yet appeared in his court. The Patna High Court referred to Section 363(5) of the Code and observed that when any person is affected by a judgment or order passed by criminal court then on an application made in that behalf and on payment of prescribed charges, a copy of the order, deposition or any other part of the record has to be given to him. The Patna High Court observed that there is nothing therein to show that before a person can obtain such copy he must appear in court. The Patna High Court, therefore, directed the learned magistrate to supply to the petitioner certified copies of the complaint and the order passed thereon.

4. In **Krishnan Sreevalsan's case (supra)**, while dealing with somewhat similar question, the Kerala High Court observed that the application for a copy of the judgment could be filed either by the accused or on his behalf by his counsel and grant of a

copy of the judgment to either of them will be in accordance with law and spirit of sub-section (2) of Section 363 of the Code.

5. We are in respectful agreement with the view taken by the Patna High Court and Kerala High Court in the above judgments. Hence, we direct the Registrar of the Sessions Court for Greater Bombay to issue certified copy of the order dated 4/4/07 passed in Criminal Miscellaneous Application No. 625 of 2006 as well as Criminal Miscellaneous Application No. 52 of 2007 in Special Case No. 68 of 2000 to the petitioner. However, if the petitioner decides to challenge the said order, the petitioner will have to remain present in the court on the day on which the petition challenging the said order will be taken up for admission and hearing. A person against whom a non-bailable warrant is issued cannot file any proceedings in any court without surrendering to the court. A proclamation is pending against the petitioner. No relief can

be granted to an absconding accused unless he surrenders.

6. Petition is disposed of.

JUDGE

JUDGE